

U. S. PTO Customer No. 25280

Case #2171

REMARKS

Claims 1-68 are present in the application. Claims 2, 3, 10, 23, 26, 34, 38-41, 47, 53, 57 and 59-68 have been canceled without prejudice. Claims 1, 20 and 45 are currently amended. No claims have been added. Thus claims 1, 4-9, 11-22, 24, 25, 27-33, 35-37, 42-46, 48-52, 54-56 and 58 remain subject to continued examination. Each of these claims is believed to be in condition for allowance. Accordingly, an action to that effect is requested at this time.

INTERVIEW SUMMARY:

Applicants gratefully acknowledge the courtesy extended by the Examiner in conducting telephonic interviews of 29 August 2003 and 14 September 2003 and in reviewing the Kilpatrick declaration.

During the initial interview it was agreed that Applicants would submit a declaration asserting that the performance of the claimed product was unexpected and that the claimed combination of low face weight and low cushion weight was contrary to accepted wisdom. During the second interview following submission of the Kilpatrick declaration Applicants were advised that the Examiner disagreed with Mr. Kilpatrick's stated opinion that the claimed invention was contrary to accepted wisdom and that Mr. Kilpatrick's surprise at the successful performance of the claimed invention did not carry substantial weight since a product meeting applicable Gmax, resiliency rating and Hexapod pile height retention measurements should have been apparent to one of skill in the art in view of the art of record and trends in improved yarn resiliency. Applicant's were also advised that while Mr. Kilpatrick would be considered to be of one of skill in the art, his status as an employee of the assignee of the present invention diminished to some degree the weight which could be ascribed to his opinion.

Applicants understand the Examiner's position but nonetheless respectfully disagree. Thus, at this time it is requested that Mr. Kilpatrick's declaration be entered in the file for future consideration during the continued examination.

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ART REJECTIONS:

Each of the claims presently stands rejected under 35 U.S.C. 103(a) as being obvious over U.S. patent 4,522,857 to Higgins in view of EP 048968 to Porter. Continued rejection of claim 1 in its amended form (or any claim depending therefrom) is respectfully traversed and reconsideration of all outstanding art rejections is requested at this time.

Independent claim 1 has been amended to be directed specifically to a carpet tile. As pointed out in the accompanying declaration of Richard Kilpatrick (a Director of Development for the owner of the primary Higgins reference) in a tile construction the combination of lightweight materials as claimed would have been expected to provide inadequate dimensional stability to prevent edge curl, skew and other deformations in response to localized crushing at a point within the tile. The present invention thus represents a departure from accepted wisdom.

In a carpet tile construction the carpet itself must provide internal dimensional stability since substantial external stability from stretching and nail strips is not provided. Thus, a carpet tile would have been considered particularly susceptible to anticipated problems expected from the use of light weight materials.

The prior Office Action takes the position that since the Higgins '857 patent (which teaches a carpet tile) is silent as to face weight, one of skill in the art would have looked to Porter to determine suitable face weights. Applicants must respectfully disagree due to the fact that Porter is not directed to a carpet tile and thus does not necessarily reflect face weights which would be expected to work in a carpet tile. Certainly, in view of the fact that Porter teaches applying the lightweight carpet across a heavy weight foam even in a broadloom construction Porter should not be viewed as providing a teaching of suitable face weights for dimensionally stable carpet tiles using very light weight cushions.

Applicants respectfully submit that a much more relevant teaching as to suitable face weights for use in carpet tiles is derived from the practices and experiences of those actually involved in tile manufacture. As a Director of Development for the company which manufactured the product disclosed in the primary Higgins reference, Mr. Kilpatrick is intimately familiar with what face weight and cushion weight combinations would have been considered suitable prior to the present invention.

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The fact is that the claimed combination of low face weight and low cushion weight in a tile as presently claimed was not recognized as viable by those practicing in the art prior to the present invention. If such a combination was considered viable it no doubt would have been utilized so as to achieve the resulting economic benefits. It is respectfully submitted that such actual practice provides the best evidence as to the accepted wisdom in the art and that such practice supports the assertions as to such wisdom at the time of the invention.

In order to support continued rejection, the Patent Office must take the position that the assertion of the state of accepted wisdom as set forth in Mr. Kilpatrick's declaration is erroneous. However, his assertion is supported by actual industrial practices which reflect that accepted wisdom.

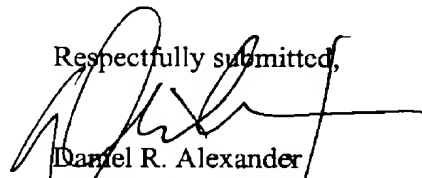
CONCLUSION:

Applicants respectfully request that all remaining claims be passed to issue. While an attempt has been made to address all outstanding issues, to any extent that one or more issues remain, the undersigned respectfully requests a telephone conference to resolve such issues.

While submission of this amendment is believed to be timely, to any extent required, an Extension of Time is hereby requested. Please charge any fees or credit any overpayment in connection with this Amendment to Deposit Account 04-0500.

September 15, 2003

Respectfully submitted,


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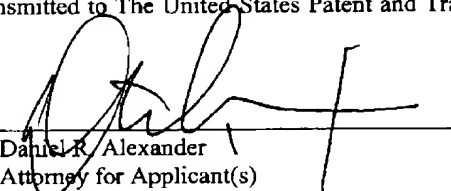
CERTIFICATE OF FACSIMILE TRANSMISSION

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I hereby certify that this correspondence is being transmitted to The United States Patent and Trademark Office at 703-872-9210 on September 15, 2003.

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